

ADOPTED

JANUARY 26, 1994

MEMORANDUM

TO: BOSTON REDEVELOPMENT AUTHORITY AND
PAUL L. BARRETT, DIRECTOR

FROM: BRIAN DELOREY, ASSISTANT DIRECTOR FOR
ECONOMIC DEVELOPMENT

SUBJECT: CUSTOM HOUSE

noted

SUMMARY: THIS MEMORANDUM REQUESTS THAT THE BOSTON REDEVELOPMENT AUTHORITY AUTHORIZE THE DIRECTOR TO EXECUTE AN AMENDED NOTE AND MORTGAGE FOR THE CUSTOM HOUSE WITH THE GENERAL SERVICES ADMINISTRATION.

The Boston Redevelopment Authority (BRA) purchased the Custom House from the General Services Administration (GSA) on October 9, 1987 for \$11 million. At that time, a downpayment of \$1.1 million was made, and the GSA granted the BRA a note for \$9.9 million secured with a mortgage on the property. Following one designation round which proved unsuccessful, the BRA granted tentative designation to the Beal Companies on July 26, 1991. The Beal proposal is to rehabilitate the Custom House into a luxury hotel operated by Inter-Continental Hotels. The adjacent 131 State Street building would also be rehabilitated for hotel use, resulting in a single hotel property containing 340 hotel rooms.

The terms of the existing GSA note call for the balance of \$9.9 million to be paid in quarterly installments of interest only through October of 1992 and then in quarterly, self-amortizing payments through October of 1997. This payment schedule can no longer be supported by the Custom House project.

Therefore, the BRA has renegotiated the terms of the note with the GSA to lengthen the payment term to an additional 30 years, reduce the contract interest rate from 11% to the present value of funds which as of January, 1994 will be 3%. The payments will now be interest only payments with a balloon payment at the end of the new thirty year term.

The attached letter from the GSA sets forth the new terms for the payment of the GSA obligation. These new terms in substantially the form as submitted by GSA are a key ingredient in the successful redevelopment of the Custom House.

An appropriate vote follows:

That the Director be authorized to execute a revised note and mortgage for the Custom House with the General Services Administration, as well as any other documents deemed necessary and appropriate related to the restructuring of the obligation of the Boston Redevelopment Authority to the General Services Administration with respect to the Custom House; all such documents to include such terms and conditions as the Director deems appropriate and in the best interest of the Authority.

Boston Redevelopment Authority

Clarence J. Jones, *Chairman*

Paul L. Barrett, *Director*

December 7, 1993

Mr. Earl E. Jones
Commissioner
Federal Property Resources Service
General Services Administration
18th and F Streets, N.W.
Washington, D.C. 20405

Dear Commissioner Jones:

Consistent with our meeting on November 15, 1993, with Administrator Johnson and confirming subsequent agreements between our respective staffs, it is understood that the Boston Redevelopment Authority (BRA) and the General Services Administration (GSA) agree to the following actions to resolve all outstanding Custom House issues:

GSA's request for priority status for the debt and for a recourse note will be dropped with the BRA's obtaining a Section 108 loan guarantee.

The BRA will pay the amount of \$1,050,000 to GSA at the time of closing of the financing for the redevelopment of the Custom House. This contingent payment represents fifty percent of the scheduled \$2,100,000 of Additional Rent that is outlined in Section 3.1B(2) of the proposed lease with the Redeveloper. The actual payment to GSA will be accompanied by a Certified Public Accountant statement that the amount forwarded to GSA represents fifty percent of said Additional Rent as received by the BRA. This amount will apply against the outstanding interest owed at the closing of the debt restructuring with GSA with the balance of the outstanding interest being owed as an additional balloon payment but the added amount is not part of the loan guarantee and is not being serviced by an interest bearing note. GSA will waive all accrued penalties.

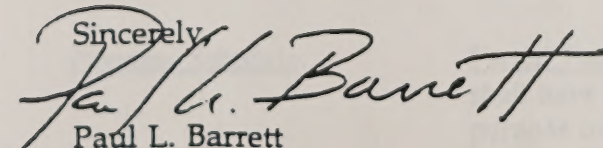
The interest rate of the new \$9.9 million note will be the current value of funds as calculated by the U.S. Treasury at the time of closing with GSA.

Upon receipt of BRA's written advice that all necessary historical preservation requirements have been met, GSA will execute amendatory documents to provide for the proposed connector between the Custom House and 131 State Street.

BRA agrees not to pursue special legislation concerning the Custom House.

Consistent with the above resolution of terms and conditions, BRA and GSA agree to execute an amendatory deed and other necessary documents within 30 days of the date of this letter. Payments will be made quarterly on the same basis as the existing note.

Sincerely,



Paul L. Barrett



General Services Administration, Region 2
Jacob K. Javits Federal Building
New York, NY 10278

December 21, 1993

BY HAND

Paul L. Barrett
Director
Boston Redevelopment Authority
100 City Hall Plaza
Boston, Massachusetts

Re: Restructuring Of The \$9.9M Loan From The General Services Administration As
Agent For The United States Government To The Boston Redevelopment Authority

Dear Mr. Barrett:

This letter is to confirm the offer of the General Services Administration (the "GSA") to restructure the existing loan (the "Loan") made to the Boston Redevelopment Authority (the "BRA") on real property located at McKinley Square in Suffolk County, Boston, Massachusetts and commonly known as the Custom House Property (the "Property"). The Loan has a current outstanding principal balance of Nine Million Nine Hundred Thousand and 00/00 (\$9,900,000.00) Dollars, is evidenced by a promissory note in the principal amount of Nine Million Nine Hundred Thousand and 00/00 (\$9,900,000.00) Dollars (the "Note") and is secured by a first lien mortgage on the Property (the "Mortgage"). The restructured Loan is to be secured by the Mortgage, as amended, on the Property, a Guarantee of the United States Department of Housing and Urban Development and otherwise on the terms and conditions set forth below:

<u>Borrower:</u>	The Boston Redevelopment Authority As Agent For The City of Boston
<u>Principal Indebtedness:</u>	Nine Million Nine Hundred Thousand and 00/00 (\$9,900,000.00) Dollars
<u>Amended Maturity Date:</u>	Thirty (30) Years from the Closing Date
<u>Closing Date:</u>	On or before January 20, 1994.
<u>Interest Rate:</u>	The interest rate shall be the current value of funds to the U.S. Treasury on the Closing Date pursuant to 31 U.S.C. 3717, and 4 C.F.R. 105-55.005 (1993).
<u>Payment Schedule:</u>	<u>Partial Payment Of Past Due Interest</u> Provided that the Borrower shall have obtained financing (the "Redevelopment Financing") for the purpose of redeveloping certain premises located in McKinley Square,



Suffolk County, Boston, Massachusetts commonly known as the Custom House (the "Property"), the Borrower shall pay to the GSA, as partial payment of interest due and unpaid under the Note, one-half of any sum received pursuant to any lease of the Property entered into currently with, or as part of, said Redevelopment Financing, but in no event more than the sum of \$1,050,000.00 (the "Partial Payment of Past Due Interest"). In the event that the Borrower makes such Partial Payment Of Past Due Interest, the sum of such Partial Payment Of Past Due Interest shall be deducted from the Total Past Due Interest to be paid on the Amended Maturity Date.

Payment Under the Amended Note Interest shall be payable in 120 equal consecutive installments payable quarter-annually beginning on April __, 1994, and thereafter on the __ day of each January, April, July and October and on the date the Principal Indebtedness becomes due. The Principal Indebtedness together with: (i) all accrued and unpaid interest due under the Amended Note; and (ii) all due and unpaid interest under the Note ("Total Past Due Interest"), shall be payable by 11:00 A.M. Boston, Massachusetts time on the Amended Maturity Date. However, provided that the Borrower shall have previously paid the Partial Payment Of Past Due Interest, the sum of such Partial Payment Of Past Due Interest shall be deducted from the amount of Total Past Due Interest to be paid on the Amended Maturity Date. Provided that the Closing of the restructuring of the Loan as contemplated herein shall occur no later than January 8, 1994, the amount of the Total Due And Unpaid Interest shall be \$2,931,245.47.

Guarantor:

The United States Department of Housing and Urban Development shall absolutely and unconditionally guarantee for the full term of the Amended Note and otherwise on terms and conditions satisfactory to the GSA, the payment of the amount of the Principal Indebtedness due under the Amended Note, Amended Mortgage and all Restructured Loan Documents as hereinafter defined (the "HUD Guarantee").

Collateral:

The restructured Loan shall be secured by the Restructured Loan Documents as hereinafter defined.

Other Loan Covenants:

The Borrower shall deliver to the GSA, written certification that all necessary historic preservation requirements with regard to permission to construct, for the purpose of redevelopment of the Property for use as a hotel, the proposed connector (the "Connector") between the Property and certain premises having a street address of 131 State Street, Boston, Massachusetts, have been obtained by the Borrower, and that all objections to the same have been withdrawn from and by

the National Trust for Historic Preservation, the SHPO, the ACHP and any other similar advisory or regulatory agency having jurisdiction over the same (collectively, the "Authorities"). Provided that the Borrower shall have delivered such written certification to the GSA, GSA shall deliver to the Borrower on the Closing Date such documentation as may be required to waive enforcement of any provision of said Deed which would prohibit construction of said Connector as approved by said Authorities.

Appraisals:

The GSA shall have the right to appraise (at its sole expense) the Property at any time, provided that, absent a default, Borrower shall not be obligated to reimburse the GSA for costs associated with any such appraisal.

General Conditions:

This commitment is also subject to the General Conditions attached hereto as Exhibit A

This letter is meant to summarize only the primary business terms which have been accepted by the GSA and agreed upon by the parties relating to the restructuring of this Loan. The Restructuring Agreement and other documentation which will be executed to evidence this transaction shall be construed as the governing agreements between the GSA and the Borrower and the Guarantor.

If you find that the terms and conditions of this commitment letter acceptable, please sign below where indicated and return this letter to the attention of James A. Peterson, Special Assistant to the Regional Administrator, General Services Administration, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts. Considering the expedited schedule of this matter, hand delivery of your response is encouraged. If the GSA has not received this original letter countersigned by all parties prior to 4:00 P.M. December 29, 1993, this commitment shall be deemed null and void and the GSA will be under no obligation to restructure its Loan.

If you have any questions or concerns regarding the above, please give Mr. Peterson a call at (617) 565-5860.

GENERAL SERVICES ADMINISTRATION

Karen Adler

Karen Adler, Regional Administrator

cc: Honorable Thomas M. Menino
Mayor of the City of Boston

Agreed To and Accepted:

Paul L. Barrett, Director
Boston Redevelopment Authority

EXHIBIT A
GENERAL CONDITIONS

The following general terms and conditions are attached to and made a part of a Commitment Letter of the General Services Administration (the "GSA")

1. Assignment: The identity of the Borrower is of material importance to the GSA. This commitment and any collateral for the restructured loan shall not be assigned or transferred by the Borrower without the prior written approval of the GSA. No junior mortgage or encumbrance on the Property will be allowed without the GSA's prior written consent. Notwithstanding the foregoing, in the event that the City of Boston shall, during the term of the Restructured Loan, issue bonds for the purpose of financing the development of the Property as a hotel facility (the "Bond Financing"), and otherwise in compliance with the terms and conditions of the Restructuring Agreement and Deed of the Property into the BRA, and shall further grant to the holders of such bonds a mortgage to secure said Bond Financing (the "Bondholder Mortgage"), to the extent that proceeds of such Bond Financing shall be dedicated exclusively to the redevelopment of the Property as a hotel facility, but in no event in an amount greater than such sum as the GSA shall deem to be satisfactory following review of the Borrower's current hotel project financing proposal, the GSA shall subordinate the lien of the Amended Mortgage and other appropriate Restructured Loan Documents to the lien of the Bondholder Mortgage, and provided further that except with respect to the Bondholder Mortgage, the Borrower shall not further encumber the Property until the Debt, as evidenced by the Restructured Loan Documents has been fully satisfied.
2. Security: The restructured loan shall be evidenced by the Promissory Note Dated October 9, 1987 made by the Borrower and payable to the order of the GSA in the principal amount of \$9,900,000.00 (the "Principal Amount") as amended by an Allonge in form and substance satisfactory to the GSA (the "Amended Note"). The Principal Amount and all interest due under the Amended Note shall be paid at the Amended Maturity Date. The Amended Note shall be secured by:
 - (a) The Mortgage dated October 9, 1987 delivered by the Borrower to the GSA in the principal amount of the Loan, encumbering the Property and recorded with the Suffolk County District Registry of Deeds in Book 14178, Page 157 as amended by the Amended and Restated Mortgage and Security Agreement (the "Amended Mortgage"), which Amended Mortgage shall constitute a first lien on the Property unless and until the Borrower shall execute and deliver the Bondholder Mortgage, as

described above, in which instance the Amended Mortgage shall be made subordinate to said Bondholder Mortgage as provided above, and subject further to only such title exceptions, if any, as shall be acceptable to the GSA; and

- (b) An assignment of all leases relating to the Property and of all rents, issues and profits derived from the Property (the "Collateral Assignment Of Leases and Rents"), which, in the event that the Borrower shall execute and deliver a collateral assignment of leases and rents to the Bondholders, shall be subordinated to such assignment on the same terms and conditions as the subordination of the Amended Mortgage; and
- (c) A first security interest in all operating permits, licenses, accounts, and contract rights, and in all of the building materials supplies, goods, equipment, furnishings, fixtures, chattels and other items of personal property of the Borrower relating to, situated on, or used or usable in connection with the construction, maintenance and/or operation of the Property, which, in the event that the Borrower shall execute and deliver a security interest in such personalty to the Bondholders, shall be subordinated to such security interest on the same terms and conditions as the subordination of the Amended Mortgage ; and
- (d) The absolute and unconditional Guarantee of the United States Department of Housing and Urban Development as more particularly described in the Commitment Letter as the HUD Guarantee, which Guarantee shall be delivered to GSA on or before January 6, 1994.

The above security and the restructured loan transaction shall be evidenced by a Loan Restructuring Agreement, an Amended Note, an Amended and Restated Mortgage and Security Agreement, the HUD Guarantee, an Assignment of Leases and Rents, UCC 1 Statements and such ancillary documents as the GSA may deem necessary to evidence and secure the Restructured Loan. The above-referenced documents are sometimes herein referred to collectively as the Restructured Loan Documents.

- 3. Interest: Interest shall be paid quarterly in arrears on the basis of a 360 day year for the actual days elapsed.
- 4. Documentation: The form and substance of all documents to be delivered to the GSA at or prior to the closing of the restructured loan, including but not limited to the Restructuring Agreement, and all other Restructured Loan Documents as are required to evidence or secure the restructured loan contemplated by this Commitment Letter, and any and all instruments collateral to the restructured loan, shall in all respects be satisfactory to the GSA.
- 5. Financial Condition and Value If the Property or the Borrower shall be the subject of any pending or imminent litigation, or if the Borrower shall be the subject of any bankruptcy, insolvency, reorganization or insolvency proceeding or, if in the GSA's sole opinion there shall be any material adverse change therein between the date of issuance of this commitment and the date of closing, the GSA shall have the right not to close the restructuring of the loan.

6. Legal Opinions: The GSA shall receive an opinion from Borrower's Counsel as to:
 - (a) the due organization, valid existence and good standing of the Borrower; and
 - (b) the due authorization, execution, delivery and binding effect of the restructured loan documents executed by the Borrower.
7. Further Assurances: The foregoing terms and conditions are predicated upon our present understanding of the proposed transaction. Upon development of a more comprehensive understanding of the details relevant to the project, some further instruments, documents and assurances of performance may be required.
8. Late Charges: The Loan Documents shall require that a five (5%) percent late charge be added to any monetary payment not made when due.
9. Default Rate of Interest: Five (5%) percent above the applicable interest rate.
10. Representations: All representations made by the Borrower to the GSA with respect to obtaining the loan or otherwise with respect to restructuring the loan shall be deemed to be material and relied upon by the GSA in issuing this commitment and shall survive the closing of the restructured loan.
11. Inspection: The GSA or its authorized agent may inspect the Property during normal business hours during the term of the restructured loan.
12. Governing Law: The transaction contemplated by this commitment letter shall be governed by federal law.

